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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MESA WEST, INC.,

Plaintiff and Respondent,

v.

NATHAN D. LaMOURE et al.,

Defendants and Appellants.

G038601

(Super. Ct. No. 05CC05262)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Charles Margines, Judge. Affirmed.

Nathan D. LaMoure, in pro. per., for Defendants and Appellants.

Vogt & Resnick and Jack Smart for Plaintiff and Respondent.

Mesa West, Inc., hired Nathan D. LaMoure and his firm, Nathan D. LaMoure, a professional corporation (collectively LaMoure), to serve as its legal counsel. This case concerns an attorney fees dispute arising from an attorney-client contingency fee agreement that the trial court determined failed to comply with the strict provisions of Business and Professions Code section 6147.¹ Unhappy with having to disgorge and reimburse to Mesa West more than \$900,000 in fees, LaMoure's appeal attacks the judgment from every conceivable angle. We recognize LaMoure paid a high price by failing to comply with the rules designed to protect clients (§ 6147), but we find no reason to disturb the court's judgment awarding LaMoure reasonable fees calculated by multiplying his normal billable rate (\$240) for the documented hours he worked. We affirm the judgment.

I

LaMoure represented Mesa West for approximately 30 years. Mesa West, prior to its dissolution in December 2003, manufactured equipment for electro and electroless plating. LaMoure generally billed Mesa West at an hourly rate (\$240 per hour was the highest). However, as will be discussed, in 1999 the parties entered into a written contingency fee agreement, which is the subject of this appeal.

The impetus for the contingency fee agreement dates back to 1996, when several disputes arose between Mesa West and three of its customers: (1) Amerock (also called Newell); (2) Pragitzer; and (3) Chemmedia. Mesa West filed collection actions against these customers, who in turn filed cross-complaints against Mesa West for breach of warranty, negligence, etc.

Mesa West hired LaMoure to litigate the collection actions, and it tendered defense of the cross-actions to its insurance carrier, Sentry Insurance Company (Sentry). Sentry engaged in unfair insurance practices, initiating declarative relief actions

¹ All further statutory references are to the Business and Professions Code, unless otherwise indicated.

questioning coverage in the Amerock action, and the Pragitzer action. Mesa West obtained a stay of the declaratory relief actions while the other actions were litigated.

Sentry hired LaMoure to “associate in” with its appointed counsel, Brumer, Rubin & Weston to defend Mesa West on the cross-actions. Sentry agreed to pay LaMoure only \$105 per hour, which was substantially less than the hourly rate LaMoure was receiving from Mesa West (\$240/hour). LaMoure routinely noted the difference in rates in his invoices, for example in one bill he stated, “Does not include deferred hourly rate difference from tender of defense through April 1997 or \$25,839 (191.4 hours @ \$135/hour).”

Mesa West settled its dispute with Amerock and Chemmedia. As part of the Amerock settlement agreement, Mesa West agreed to a lien of \$310,000 for the benefit of Amerock’s attorneys (Irell & Manella), but only if Mesa West were to pursue legal remedies against Sentry, and only if Mesa West prevailed.

In October 1999, LaMoure and Mesa West entered into an attorney-client contingency fee agreement. It provided for 50 percent of the judgment or settlement proceeds arising from the “prosecution of any and all claims and causes of action [Mesa West] has, or may have, against Sentry . . . arising or alleged to have arisen out of any policy of insurance with potential coverage for the following matters:” (1) the Pragitzer action; (2) the Chemmedia action; (3) the Amerock action; (4) the two Sentry declaratory relief actions; and (5) “any and all claims and demands against Sentry” After the stay was lifted in Sentry’s declaratory relief actions, LaMoure filed a cross-complaint alleging unfair insurance practices relating to all five of the above matters.

During the lawsuit, LaMoure hired the Law Office of Baker & Baker (Baker), and Neil Pederson, to assist in the litigation and associate in as counsel of record. Pederson, Baker, and LaMoure gave the requisite notice to Mesa West that they had agreed to a fee-splitting arrangement. Mesa West consented on the condition Baker’s

and Pederson's respective fees would be paid by LaMoure's portion of the contingency fee.

Several years later, the jury returned a verdict of \$9,764,592 (\$4,876,296 compensatory damages and \$4,882,296 punitive damages) in favor of Mesa West. However, after receiving the compensatory damages verdict, but before the punitive damages phase, Mesa West settled the matter with Sentry for \$4.1 million.

From the settlement proceeds, Mesa West paid \$310,000 to Amerock's attorneys to satisfy the lien. LaMoure demanded \$2,065,535 for costs and fees (which was 50 percent of the entire settlement sum, including the \$310,000 paid to Amerock's counsel). He also demanded \$35,236 for fees and costs incurred in matters unrelated to the Sentry action. Mesa West refused to pay LaMoure the additional sum he requested, and consequently \$40,236 was placed in a trust account (hereafter \$40,000 trust account).

In May 2003, LaMoure sent Mesa West a notice of the right to arbitrate their fee dispute before the Mandatory Fee Dispute Arbitration Committee of the Orange County Bar Association. Mesa West retained new counsel to assist in the arbitration. The new counsel advised Mesa West the attorney fees contingency agreement with LaMoure was voidable for failing to comply with section 6147, subdivision (b). In June 2003, Mesa West filed its petition to arbitrate a fee dispute with the Orange County Bar Association. In the petition, Mesa West alleged the contingency fee agreement did not comply with the requirements of section 6147, and "[c]onsequently, [Mesa West] elects to void the contract." It gave reasons why the money held in trust belonged entirely to the corporation, and it alleged the fees already paid to LaMoure "exceed[ed] a reasonable fee to which [he was] entitled[.]" LaMoure sought to join Pederson and Baker, but Mesa West did not have any dispute with these attorneys. Mesa West and LaMoure jointly executed a written release of Pederson and Baker during a pre-arbitration mediation.

In December 2003, Mesa West filed a certificate of corporate dissolution. The following year, the panel of arbitrators issued a ruling, which is not included in our record. Mesa West filed a request for a trial de novo.

In April 2005, Mesa West filed a complaint seeking declaratory relief and return of the paid contingency fees in excess of LaMoure's reasonable fees. LaMoure filed a cross-complaint seeking \$39,318 of the money held in the trust account.

After considering the evidence, the trial court issued a statement of decision. It determined the contingency fee agreement was void because it failed to comply with section 6147, as well as several Rules of Professional Conduct. The court concluded the reasonable fee for LaMoure's services was \$240 per hour, and the reasonable fees for his paralegal's services were \$60 per hour. It calculated the sum of \$364,110 for LaMoure's legal services. The court added to the sum of legal fees the amounts paid by LaMoure to the Baker firm and Pederson. It ordered LaMoure to reimburse the balance to Mesa West. As for LaMoure's cross-complaint concerning the money held in trust, the court determined some of the debts owed by Mesa West were time-barred. It ordered the parties to disperse \$25,839 to LaMoure and \$14,396 to Mesa West. The court later entered a final judgment and LaMoure timely filed an appeal.

II

1. Standing?

LaMoure asserts Mesa West, a dissolved corporation, lacked standing to void the contingency attorney fees agreement. LaMoure correctly refers to the general legal principle that a dissolved corporation lacks the power to engage in its business or make new contracts. (See Corp. Code, §§ 1905, subd. (b); 2010, subd. (a) [a dissolved corporation cannot continue its business activities].) However, without supporting legal authority, LaMoure argues, "To void a contract is, itself, an exercise of the power to contract[]" which is beyond the powers and capacities of a dissolved corporation. We disagree.

This issue is governed by the provisions of the Corporations Code relating to dissolved corporations. Corporations Code section 2010 sets out the scope of permissible activities by a dissolved corporation: “(a) A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it[,] and enabling it to collect and discharge obligations, dispose of and convey its property[,] and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof. [¶] (b) No action or proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof. [¶] (c) Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation and on realization shall be distributed accordingly.”

Penasquitos, Inc. v. Superior Court (1991) 53 Cal.3d 1180 (*Penasquitos*), is instructive. At issue in that case was whether “homeowners may bring suit for construction defects against the corporations that graded the lots and built the homes, when those corporations had dissolved before the homeowners’ discovery of the construction defects.” (*Id.* at p. 1183.) The Supreme Court examined Corporations Code section 2010 and the entire statutory scheme governing dissolved corporations. It concluded, “Although a party may not sue the shareholders of a dissolved corporation on a claim that arose after the dissolution [citations], analysis of the statutory scheme discloses a legislative intent to permit parties to bring suit against dissolved corporations for damages that occur or are discovered after dissolution.” (*Ibid.*) The *Penasquitos* court explained resolution of claims based on predissolution conduct is a permissible part of the winding up process occurring after dissolution. (*Id.* at pp. 1183-1184.)

The Supreme Court noted the California Legislature abandoned the common law view of corporate dissolution in 1929 when it enacted a statutory scheme “for the postdissolution survival of corporations [that] has endured with relatively few

changes.” (*Penasquitos*, *supra*, 53 Cal.3d at p. 1185.) Under the common law, a corporate dissolution “was treated like the death of a natural person”; a dissolved corporation could not sue or be sued and any pending actions against it abated. (*Id.* at pp. 1184-1185.) California’s statutory scheme, which is similar to provisions in several other states, authorizes the continuance of “corporate existence indefinitely for the purpose of winding up and settling the affairs” of the dissolved corporation. (*Id.* at p. 1185.) Consequently, under the statutory scheme, “the effect of dissolution is not so much a change in the corporation’s status as a change in its permitted scope of activity.” (*Id.* at p. 1190.) “Thus, a corporation’s dissolution is best understood not as its death, but merely as its retirement from active business.” (*Ibid.*)

LaMoure argues the *Penasquitos* case is not useful because it “does not speak to the powers and capacity of a dissolved corporation[.]” He asserts *Catalina Investments, Inc. v Jones* (2002) 98 Cal.App.4th 1, is more helpful. In that case, the court determined a dissolved corporation lacked capacity to seek reinstatement by means of a certificate of revocation of dissolution and thereby avoid liability for approximately \$300,000 in real property transfer taxes and fees. (*Id.* at p. 3.) The *Catalina* court determined that after filing the certificate of dissolution the corporation’s existence ceased, except for the limited purpose of winding up its affairs. The court reasoned submission of a certificate seeking to revoke dissolution more than four years later did not seem like it would be part of the corporation’s winding up process. But without deciding the issue definitively, the court found there were other reasons to uphold the trial court’s ruling. For example, the court concluded there was no authority to support the corporation’s attempt at reinstatement by use of a certificate of correction. There was no authority authorizing correction of a certificate of dissolution nunc pro tunc. (*Id.* at p. 9.) Moreover, there was no evidence of a mistake or defect in the dissolution certificate that required correction. We fail to see how this case is analogous.

We conclude Mesa West's arbitration proceedings and related lawsuit concerned the winding up of its business. Essentially, the purpose of both actions was for Mesa West to protect and recoup settlement money from LaMoure. Mesa West's initial objective in arbitration was to protect money held in the trust account from LaMoure. The goal expanded when it filed its own arbitration petition seeking to recoup money already paid to LaMoure and it made the express election to void the contingency fee contract and recoup overpaid fees. The lawsuit was filed before Mesa West filed its certificate of dissolution. As expressly stated in Corporations Code section 2010, subdivision (b), "No action or proceeding to which a corporation is a party abates by the dissolution of the corporation or by reason of proceedings for winding up and dissolution thereof." We conclude Mesa West had standing to prosecute and defend the arbitration.

LaMoure asserts Mesa West did not have standing to file a new action to void a pre-dissolution contract. He argues a corporation cannot sue for an obligation unknown on the date of dissolution. We conclude he has misconstrued the record and applicable legal authority.

First, LaMoure's argument is contrary to Corporations Code section 2010, subdivision (c), which provides: "Any assets inadvertently or otherwise omitted from the winding up continue in the dissolved corporation for the benefit of the persons entitled thereto upon dissolution of the corporation and on realization shall be distributed accordingly." Thus, dissolved corporations have the express statutory authority to collect and distribute assets discovered after the date of dissolution as long as it is deemed part of the winding up process.

More importantly, the record indicates Mesa West discovered its right to recoup the excessive attorney fees paid under a void contract during the arbitration proceedings and pre-dissolution. The fact efforts to disgorge the unreasonable fees continued after dissolution, and required legal proceedings after the arbitration finished, is irrelevant. "[A] dissolved corporation maintains considerable corporate powers to

conduct whatever business is required to wind up its affairs—including prosecuting actions and enforcing judgments. [Citations.]” (*Timberline Inc. v. Jaisinghani* (1997) 54 Cal.App.4th 1361, 1368-1369, citing *Penasquitos, supra*, 53 Cal.3d at p. 1185.) We find no authority suggesting a dissolved corporation cannot collect money it overpaid to an attorney before its date of dissolution. If the roles were reversed, and it was LaMoure claiming the dissolved corporation owed him additional fees incurred pre-dissolution, *Penasquitos* would support his right to maintain a lawsuit against a dissolved corporation. Similarly, under the case authority and statutory scheme, dissolved corporations have the right to pursue and collect these fees/assets as part of its efforts to wind up its affairs. We conclude Mesa West had “standing” to file the lawsuit to recover attorney fees it was owed.

2. Application of Section 6147

The trial court ruled the LaMoure/Mesa West contingency fee agreement failed to comply with section 6147 in five different respects. It also concluded the agreement violated several of the Rules of Professional Conduct, as well as the holdings of *Fracasse v. Brent* (1972) 6 Cal.3d 784, and *Hall v. Orloff* (1920) 49 Cal.App.745. We need not discuss these various violations because LaMoure does not dispute those findings. Rather, LaMoure attacks the judgment from other creative angles. Specifically, he contends: (1) the court failed to appreciate the agreement between Baker and the parties was the governing contract, not the fee contingency agreement between LaMoure and Mesa West; (2) the court applied the wrong version of the statute; (3) the court failed to appreciate the statute does not apply to “hybrid” cases where the client is not involved in a pure “plaintiff” case; (4) there was no evidence Mesa West voided any of the fee agreements; and (5) Mesa West was estopped to assert voidability. None of these contentions has merit, and we will address each one in turn.

(i) Did the court consider the right fee agreement?

In its statement of decision the court stated, “The only agreement which [Mesa West] placed in issue was the attorney-client fee agreement (contingency) between [LaMoure], on one hand and [Mesa West] on the other hand. [Citation to the amended complaint.] Accordingly, reference herein to the ‘agreement’ is solely to this one agreement.” In a footnote, the court stated, “Neither . . . Pederson nor Baker . . . are parties to this lawsuit. Both [Mesa West] and [LaMoure] released . . . Pederson and Baker . . . from claims for reimbursement or recovery of attorney fees. [Citation to trial exhibit No. 252]. Moreover, each of their respective agreements provided that all compensation paid to them would come from [LaMoure’s] contingency share.” With respect to LaMoure’s argument another agreement controlled, the court stated it rejected “[LaMoure’s] argument that the Pederson Agreement (exhibit No. 502) and the Baker Agreement (exhibit No. 503) were modifications of [LaMoure’s] own agreement with [Mesa West]. Nevertheless, even if these two agreements were viewed as being part of the agreement which is at issue, [LaMoure’s] argument is rendered moot, as neither of these documents cured the aforementioned failures to comply with the provisions of . . . [section] 6147, [subdivision] (a).”

LaMoure claims the court wrongly rejected evidence and argument the governing contract was the Baker contingency fee agreement, which incorporated the original LaMoure/Mesa West 1999 contingency fee agreement as well as the Pederson fee agreement. To support his argument, LaMoure merely cites the following two general contract legal principles: (1) the intent of the parties is inferred from the written provisions of the contract; and (2) if language is susceptible to different interpretations, the court looks also at extrinsic evidence. With no other supporting legal analysis, LaMoure concludes the court was looking at the wrong agreement. He is wrong.

We have reviewed the three contracts. The first contract, between LaMoure and Mesa West clearly outlined in detail the contingency fee arrangement between those

parties. It provided Mesa West retained LaMoure to prosecute any and all claims it had against Sentry. Mesa West agreed to an initial \$1,000 retaining fee, plus a contingent fee of 50 percent of any settlement or compromise agreement. After the parties' signatures, there was a handwritten addendum initialed by the parties which provided: "Attorney and client agree that attorney may engage another attorney, or attorneys, to assist in the trial of this matter; any selection of such attorney shall be subject to the consent of client; any fees for such attorney shall be paid, if at all, out of the fees provided for in [paragraph] 4(b) [concerning the contingency fee terms]."

The Baker contingency fee agreement stated Mesa West "and its attorney" LaMoure retained Baker "to represent it in pursuing its claims arising out of the pending" Sentry lawsuit. The agreement specified that for any recovery "up to" \$1 million, "of which \$500,000 is attorneys fees, "the attorney fees shall be split as follows: [¶] (1) An equal division between LaMoure and Baker, with each paying its prorata share (50 [percent] each) of actual fees of approximately [\$100,000] to . . . Pederson" For any recovery "in excess of" \$1 million of which one half is attorney fees: "(1) The spit as set forth above up to a split of [\$500,000] . . . of total attorneys fees, then (2) [65 percent] . . . of the amount over [\$500,000] . . . in attorneys fees to LaMoure, and (3) [35 percent] . . . of the amount over [\$500,000] . . . in attorneys fees to Baker."

The agreement specified in bold, highlighted, and underlined text: "The above fee split between the attorneys does not increase the original contingency fee agreement between [c]lient and . . . LaMoure, or increase the attorney fees charged for this matter. The retainer agreements between [c]lient and LaMoure and that between [c]lient, LaMoure, and Pederson are attached hereto *for reference purposes* to insure the rights and duties of the attorneys to the [c]lient and to one another are known an agreed as part of this retainer agreement." (Emphasis omitted, italics added.) In a clarifying addendum, the Chief Executive Officer of Mesa West added above his signature "I, Paul

Stubb, consent to the association of William E. Baker, Jr., in *Sentry v. Mesa West*—on the condition that all fees are paid out of the fees earned by . . . LaMoure.”

We do not find this contract susceptible to differing interpretations, warranting the assistance of extrinsic evidence. The intent of the parties is clear. In the first agreement, Mesa West anticipated LaMoure would seek assistance from other attorneys to litigate the Sentry case. Mesa West expressly conditioned association of additional counsel on the agreement the fees paid to those attorneys would come from the fees earned by LaMoure. When LaMoure found attorneys to help him, the Rules of Professional Conduct, rule 2-200 (A)(1), required Mesa West’s consent to the fee-splitting arrangement. This requirement was satisfied because Mesa West consented to the association with Baker in the Baker contingency fee agreement. But Mesa West was careful to again specify that any fees earned by the other attorneys were to be paid out of the fees earned by LaMoure. Moreover, the original LaMoure/Mesa West contingency fee agreement was incorporated “*for reference purposes*” and was not expressly superseded by any terms of the Baker contingency fee agreement.

Accordingly, we conclude the trial court correctly concluded the relevant contract concerning LaMoure’s and Mesa West’s fee dispute was their 1999 attorney fee contingency agreement. Because Baker and Pederson were not parties to the action, and had been expressly released from any claims for fees, those agreements concerning attorney cost-splitting arrangements were irrelevant. LaMoure fails to appreciate the Baker fee-splitting agreements did not serve to supersede, but merely referenced his original 1999 contingency fee deal with Mesa West. To the extent the original contingency agreement with LaMoure was incorporated into the subsequent cost-splitting agreements, the court correctly noted the key terms violating section 6147 were not cured.

(ii) Did the court consider the right version of the statute?

LaMoure argues the court acknowledged, but then ignored that section 6147 was repealed by its own terms until January 1, 2000. He argues section 6147 was absent from the books when the 1999 contingency fee agreement was executed, and consequently, it cannot be applied.

The current version of section 6147, subdivision (a), provides its rules apply when an attorney “contracts to represent a client on a contingency fee basis” Subdivision (d) of section 6147 provides, “This section shall become operative on January 1, 2000.” Obviously, we need to examine the legislative history to determine what version of the statute, if any, was in effect in 1999.

We begin by looking at the version of section 6147 existing in the early 1990s. It specified its rules applied only when an attorney contracted to represent a “plaintiff” on a contingency fee basis. It was amended in 1994 in response to the appellate court decision of *Franklin v. Appel* (1992) 8 Cal.App.4th 875, 891 (*Franklin*), which held the statute should not be broadly interpreted “to apply to *all* clients and not merely to clients who are plaintiffs in damages actions. [¶] Should the Legislature intend section 6147 to apply to all contingency fee arrangements between attorneys and *clients generally*, irrespective of whether the representation contemplates litigation or transactional matters, a simple amendment to that effect will suffice; client or person may be substituted for plaintiff.” (Fn. omitted.)

The Legislature’s response in 1994 was Assembly Bill No. 3219 in which the phrase “the client” was substituted for the word “plaintiff” throughout the statute. (Stats. 1994, Ch. 479 [Assem. Bill No. 3219 (1993-1994 Reg. Sess.)].) Section 2 of the bill recited subdivisions (a) through (c) of section 6147 in its current form, but subdivision (d) contained a sunset clause stating, “This section shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.” (Stats. 1994, Ch. 479

[Assem. Bill No. 3219 (1993-1994 Reg. Sess.).] Section 3 of the 1994 bill repeated subdivisions (a) through (c), but subdivision (d) contained the provision, “This section shall become operative on January 1, 1997.” This section would essentially go into effect when the sunset clause contained in section 2 expired.

In 1996, the Legislature again amended section 6147 to simply “extend the dates for three years.” (Stats. 1996, Ch. 1104 [Assem. Bill No. 2787 (1995-1996 Reg. Sess.).]) In all other respects, the statute was unchanged. Section 8 of Assembly Bill No. 2787 amended section 2 of chapter 479 changing subdivision (d) to read: “This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.” (Stats. 1996, Ch. 1104 [Assem. Bill No. 2787 (1995-1996 Reg. Sess.).]) Section 9 of the bill amended section 3 of chapter 479, changing subdivision (d) to read: “This section shall become operative on January 1, 2000.” Consequently, the section 8 version was in effect from 1996 to 2000, and it governed the parties’ contingency fee agreement executed in 1999.

Moreover, the above legislative history answers LaMoure’s contention the court should have applied the first version of the statute governing only contingency fee contracts in “plaintiff’s cases” (analyzed in the 1992 *Franklin* case). As discussed above, the version of section 6147 referring only to “plaintiff’s cases” was amended in 1994. The Legislature expressly broadened the scope of the statute to apply to any contingency agreement made with a “client.” This portion of the statute has remained the same from 1994 to the present.

(iii) Does it matter that the agreement for legal services in the Sentry case was a “hybrid”?

LaMoure argues the Sentry case was not a “plaintiff’s case” and, therefore, the 1999 fee agreement is a “hybrid” not covered by section 6147. However, this contention is premised on application of the expired version of section 6147. As

discussed above, in 1999, the applicable section 6147 applied to “[a]n attorney who contracts to represent *a client* [not just plaintiffs] on a contingency fee basis” (§ 6147, subd. (a), italics added.) As the court in *Franklin* suggested, the Legislature could (and did) amend the statute to apply to “clients” and not just “plaintiffs” so section 6147 would “apply to all contingency fee arrangements between attorneys and *clients generally*, irrespective of whether the representation contemplates litigation or transactional matters[.]” (*Franklin, supra*, 8 Cal.App.4th at p. 891.)

(iv) Did Mesa West officially declare the agreement void?

LaMoure argues there is no evidence in the record showing an affirmative act of voiding any agreement. He argues Mesa West’s decision to honor Baker’s and Pederson’s agreements should be treated as an affirmation of the 1999 contingency fee agreement. Not surprisingly, he offers no case authority or legal citations to support this argument. And, as Mesa West points out in its brief, there is ample evidence the agreement was expressly declared void. In its petition to arbitrate with the Orange County Bar Association, Mesa West expressly manifested its election to void the 1999 contingency fee agreement and sought determination of the reasonable fees owed. Subsequently, in Mesa West’s original complaint, it stated, “Plaintiff hereby exercises his option, pursuant to . . . [section] 6147, [subdivision] (b), to void the contingency fee agreement, thereby leaving [LaMoure] entitled to collect only a reasonable fee.” This same statement is repeated in paragraph 45 of the amended complaint. And finally, it was mentioned in the court’s statement of decision: “By virtue of having brought this action, [Mesa West] has exercised its option and has declared the agreement void (First Amended Complaint, paragraph 45).” Based on this record, we find LaMoure’s contention disingenuous.

(v) Was Mesa West estopped to assert voidability?

The trial court concluded, “[Mesa West] is not estopped from prosecuting this action, and none of its actions or inactions constitutes a waiver of its right to proceed.

Specifically, there is no waiver present, as a waiver requires a voluntary relinquishment of a known right. [LaMoure] has failed to present sufficient evidence of such relinquishment. Likewise, [LaMoure] failed to present sufficient evidence of either a compromise of claims or an accord and satisfaction of a bona fide dispute, resulting from the parties' agreement to place \$40,000 from the settlement proceeds into trust. As for estoppel, [LaMoure] didn't urge that as a statutory defense. And, there is simply no basis for the application of the judicial doctrine of equitable estoppel against [Mesa West]. . . ."

On appeal, LaMoure argues the court was wrong. It asserts Mesa West was estopped to assert voidability by: (1) its actual negotiation of the fee agreements; (2) by limiting arbitration to \$40,000 of the fees; (3) the liability release of Pederson and Baker; and (4) by full performance of the contingent fee agreement and discharge.

Before we address each claim in turn, it is helpful to review the provision of section 6147 authorizing a client to void a contingency agreement. Section 6147, subdivision (b), provides: "Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee."

LaMoure's first estoppel argument is that Mesa West and its principals were sophisticated businessmen who negotiated the contingency percentage, despite the omission of a written statement the fee can be negotiated as required by section 6147. We conclude, contrary to LaMoure contention, Mesa West's knowledge the fee was negotiable "as a matter of law, is insufficient to constitute a ratification rendering the contingent fee agreement enforceable by [LaMoure]. Irrespective of whether the client has knowledge of the information required to be in the contingency fee agreement, the agreement is voidable if it fails to set forth that information in writing. (§ 6147.)" (*Fergus v. Songer* (2007) 150 Cal.App.4th 552, 571-572 (*Fergus*).)

LaMoure's second estoppel-based argument is disjointed and lacking legal analysis or support. He begins by arguing Mesa West waived its right to file the

underlying complaint by arbitrating only certain issues relating to the \$40,000 accounting dispute, and by releasing Pederson and Baker. However, to support this argument, he cites in one paragraph cases generally discussing the rules regarding waiver of the right to rescind when one has received the benefits of a bargain. In the next paragraph, he cites cases holding a contract is not voidable in cases of full performance of the contract, estoppel, or waiver. He ends the argument with the simple conclusion, “The same rule applies here.” What? We fail to see how voluntary initiation of the nonbinding arbitration amounted to waiver of Mesa West’s right to rescind the voidable contract.

Mesa West submitted a portion of its fee dispute to arbitration under the Mandatory Fee Arbitration Act (MFAA). (§ 6200 et seq.) Unlike other arbitration schemes, “the MFAA has its own rules and limitations, as set forth in the Business and Professions Code. As one appellate court has described it, the MFAA ‘is a closed system and the binding arbitration agreed to . . . is the arbitration conducted by [a] local bar association *under the MFAA*, not some other private alternative dispute resolution provided by another forum.’ [Citation.] The primary limitation of the MFAA is that it applies only to disputes concerning ‘[legal] fees, costs, or both’ (§ 6200, subd. (a)) and is specifically inapplicable to ‘[c]laims for affirmative relief against the attorney for damages or otherwise based upon alleged malpractice or professional misconduct’ (*id.*, subd. (b)(2)). [¶] . . . [Moreover, t]he nature of the obligation to arbitrate under the MFAA differs from that under standard arbitration in two important ways. First, the obligation to arbitrate under the MFAA is based on a statutory directive and not the parties’ agreement. Thus, a client may invoke the MFAA and proceed to arbitration despite the absence of any prior agreement to do so. . . . [¶] Second, section 6200, subdivision (c), provides: ‘[A]rbitration under this article shall be voluntary for a client and shall be mandatory for an attorney if commenced by a client.’ In other words, whereas a client cannot be forced under the MFAA to arbitrate a dispute concerning legal fees, at the client’s election an unwilling attorney can be forced to do so. [¶] The finality

of an arbitration award under the MFAA also generally differs from an award rendered pursuant to standard arbitration under the [California Arbitration Act]. . . . [A]n award rendered pursuant to an arbitration under the MFAA is nonbinding, and either party may seek a trial de novo (§ 6204, subd. (a)). The MFAA, however, also provides that the parties may agree in writing that the arbitrator's award will be binding. (*Ibid.*)” (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 984-985.)

The record in this case shows Mesa West voluntarily agreed to submit the accounting dispute over the \$40,000 held in trust to arbitration under the MFAA. It also sought to void the 1999 contingency fee agreement. The court admitted some of the arbitration pleadings into evidence, not for their truth, but to show LaMoure did not default. The court correctly refused to admit the arbitration award because it was irrelevant. The arbitrator's award was nonbinding and could not be used to limit the scope of issues to be decided by the court in the trial de novo. We find nothing in the statutory scheme or case law precluding Mesa West from relitigating the arbitration fee claims, or raising new claims of damages in the trial.

LaMoure's next argument is Mesa West's release of Pederson and Baker served as a release and discharge of himself too. He relies on Civil Code sections 1541 [obligation extinguished by release], and 1543 [the release of one joint debtor does not extinguish obligation of the others]. LaMoure explains that although he may not have been completely released as a joint debtor (Civ. Code, § 1543), Code of Civil Procedure section 877, subdivision (a), provides the release “shall reduce the claims against the others in the amount stipulated by the release . . . or in the amount of the consideration paid for it whichever is the greater.” LaMoure boldly concludes that because the court failed to determine what consideration was paid for the release, it must be assumed it was the full amount of attorney fees paid on final distribution to the attorneys. We disagree.

This argument is entirely based on the faulty premise LaMoure, Pederson, and Baker were joint debtors. As described above, Mesa West and LaMoure agreed to a

contingency fee agreement in 1999. Mesa West paid LaMoure a fee according to the terms of that agreement. Their dispute concerns that same fee. Although there were fee-splitting arrangements between LaMoure, Pederson, and Baker, it was expressly specified the other attorneys were to be paid from the one sum Mesa West paid to LaMoure. Consequently, Mesa West's dispute is solely with LaMoure over the validity of the 1999 contingency fee agreement and not with the other attorneys. Voiding the 1999 contingency fee would not require disgorgement of fees from anyone but LaMoure.

LaMoure's final argument is Mesa West was estopped to void the agreement by virtue of having agreed to distribution of the settlement proceeds. There is no case authority to support this contention. The case LaMoure relies upon involves an hourly fee contract not governed by section 6147.

We conclude this argument is at complete odds with the underlying policy of protecting clients, and the plain language of section 6147. A client's remedy is clearly stated as follows: "Failure to comply with any provision of this section renders the agreement voidable at the option of the plaintiff, and the attorney shall thereupon be entitled to collect a reasonable fee." (§ 6147, subd. (b).) This provision does not expressly provide any time limits. It does not expressly apply only to claims where a contingency fee has not yet been paid. Moreover, waiver requires "the intentional relinquishment of a *known* right." (See *Harper v. Kaiser Cement Corp.* (1983) 144 Cal.App.3d 616, 619, italics added.) Mesa West claimed it did not become aware of its right to void the contract until after it had distributed the settlement proceeds to LaMoure because it had retained new counsel to defend it in the arbitration over an additional \$40,000. LaMoure provided no evidence to refute this claim. It is reasonable to assume that during LaMoure's representation he did not inform Mesa West it possessed the option of voiding the fee agreement.

(vi) *Was the trial court's calculation of a reasonable fee proper?*

In its statement of decision, the court determined the reasonable fee by multiplying a \$240 hourly rate LaMoure testified about and set forth in the agreement, with the amount of time (1,499 hours) LaMoure testified (and Mesa West agreed) he spent on the case. The court concluded the actual compensation received by Pederson and Baker would be added to the computation of the reasonable value of LaMoure's services, as well as the 72.5 hours billed as clerks' and paralegals' time at their rate of \$60 per hour. The court rejected Mesa West's claim LaMoure's time should be reduced for efforts directed at the first \$310,000 of recovery and paid to Amerock under a lien. The court concluded LaMoure should be reasonably reimbursed for his efforts.

The court also discussed several factors it considered in determining the reasonable fees. First, it noted one factor often applied in determining the reasonableness of the fees is whether the agreement was unconscionable. Rejecting Mesa West's argument, the court stated the agreement was not unconscionable when it was executed. The court stated, "among the factors" considered was the uncontradicted testimony the action against Sentry was a "long shot" and Mesa West initially sought to resolve the litigation with a mutual "walk away."

The court rejected LaMoure's argument a contingency multiplier of 3 or 4 should be used in computing reasonable fees due to the value of his services as well as the extraordinary result obtained at trial. The court noted the Supreme Court rejected a similar argument in *Chambers v. Kay* (2002) 29 Cal.4th 142. The court reasoned using a multiplier would contradict the policies underlying section 6147. The court should not simply disregard LaMoure's failure to comply with section 6147, and his violation of several provisions of the Rules of Professional Conduct.

LaMoure argues the court applied erroneous factors and, accordingly, the fee fixed by the court is "unconscionably low." He claims the court should have applied the nine factors delineated by the court in *Fergus, supra*, 150 Cal.App.4th 552. He also

suggests the court gave weight to his violation of ethical rules in determining a reasonable fee, which the *Fergus* case held was an improper consideration. We find the case instructive, but it does not support LaMoure's contention the fee calculation was reversible error.

The court in *Fergus* held that a fee agreement failed to comply with section 6147 and was voidable because it did not include a statement the fee was negotiable. (*Fergus, supra*, 150 Cal.App.4th at p. 558.) The jury was required to determine the attorney's reasonable fee. During trial, the attorney testified he did not accurately keep track of all his hours, but he worked far more than the 1,826.5 hours shown on a computer printout from his records. He stated that during this time period his hourly rate was \$320. (*Id.* at p. 561.) In its instructions to the jury, the court gave nine factors to consider in calculating reasonable attorney fees. (*Ibid.*) "The trial court further instructed the jury as follows: 'After considering the nine factors that I have given you, you shall determine the amount of a reasonable attorney's fee based upon the hours you determine were worked by [the attorney] and the hourly rate that you determine to be reasonable for his work.'" (*Ibid.*)

The jury in the *Fergus* case determined the attorney was entitled to \$1.2 million. (*Fergus, supra*, 150 Cal.App.4th at p. 561.) This verdict was upheld on appeal. The appellate court concluded substantial evidence supported the jury's determination. It reasoned the attorney's "normal hourly rate was \$320, but the jury could have reasonably concluded that, based on the nine factors [citation], he was entitled to considerably more than his normal hourly rate. [The attorney's] services were not normal; they were extraordinary." The court noted the underlying case was very time consuming and the attorney had obtained a "spectacular" result for his client. The court found that based on the attorney's testimony and the evidence (24 boxes of work product, 123-page summary of the work performed involving 32 matters in 14 courts), the jury could have determined he worked more than what was logged into the computer records. (*Id.* at pp. 567-568.)

Moreover, the court rejected the argument the trial court abused its discretion in excluding evidence the fee agreement violated ethical codes and rules of practice. (*Fergus, supra*, 150 Cal.App.4th at p. 577.) It reasoned those violations “had no bearing on the determination of the reasonable value of . . . services.” (*Ibid.*) The jury was not being asked to enforce an illegal claim because the plaintiff had exercised its right to void the contingency agreement and the attorney was authorized to seek payment of reasonable attorney fees under section 6147.

In the case before us, we conclude substantial evidence supports the court’s calculation of LaMoure’s reasonable fees. LaMoure invoiced 1,499 hours of work in the Sentry matter. Mesa West did not dispute this time was spent. The court rejected *estimated* attorney time that was not invoiced. However, LaMoure does not offer any reason why the court’s rejection of a mere estimation was an abuse of discretion. We conclude it was reasonable for the court to rely on the amounts actually invoiced as the case was progressing.

As for the hourly rate, LaMoure testified his hourly rate at the time of the litigation was \$240, which Mesa West and the court agreed was a reasonable rate. LaMoure argues the court ignored the general rule that “a regular hourly rate does not compensate an attorney fairly on a contingent fee case.” But this is no longer a contingent fee case. As aptly noted in the *Fergus* case, “Where, as here, a client exercises his right to void a contingency fee agreement, section 6147 does not permit the trier of fact to consider the contingent nature of the fee arrangement in determining a reasonable fee. If the contingency fee agreement is void, there is no contingency fee arrangement. ‘A void contract is no contract at all; it binds no one and is a mere nullity. [Citation.] Consequently, such a contract cannot be enforced. [Citation.]’ [Citation.] [¶] The deterrent and protective purposes of . . . section 6147 would be impaired if an attorney who was barred from enforcing a contingency fee agreement would nevertheless be entitled to a percentage of the recovery based on the contingent risk factor. The

attorney would in effect be receiving a contingency fee even though the contingency fee agreement had been voided by the client. A contingency fee ‘is contingent not only on the ultimate success of the case but also on the amount recovered; that is, the fee is measured as a percentage of the total recovery.’ [Citation.]” (*Fergus, supra*, 150 Cal.App.4th at p. 573.)

We find no support in the record for LaMoure’s claim the court punished him because the contingency agreement violated section 6147 and several rules of ethics. Certainly, the court noted the rule and statutory violations were reasons not to award LaMoure the entire contingency fee award. But this is not a case where the court reduced the rate or slashed the hours as a sanction. The Legislature in enacting section 6147 expressly declined to make total forfeiture of fees the appropriate sanction. This result is consistent with case authority providing a lawyer may recover the reasonable value of services performed. (See *Iverson, Yoakum, Papiano & Hatach v. Berwald* (1999) 76 Cal.App.4th 990, 996 [quantum meruit].) LaMoure was entitled to recover only a reasonable fee, not a discounted contingency fee, under section 6147. Although LaMoure received a fantastic result in an undisputed long-shot case, it cannot be said that paying him his going legal rate for the hours he invoiced was reversible error.

(vii) Should the court have ruled on LaMoure’s motion for a judgment under Code of Civil Procedure section 631.8?

LaMoure complains the court’s statement of decision did not address the issues raised in his motion. He states the court dealt only with section 6147 and failed to address the following pivotal issues: (1) The effect of the court prior rulings on the motions in limine; (2) the conclusive effect of full performance; (3) Mesa West’s payment before voiding the contract should have resolved the case; (4) the release of Baker and Pederson should have been dispositive; (5) a dissolved and disabled corporation lacks standing; and (6) the court relied on the wrong version of section 6147. Absent from the one paragraph argument is any record reference to the purported motion

made under Code of Civil Procedure section 631.8. The argument misstates the record because as discussed above, the court did address many of these issues in its statement of decision. But more importantly, missing from the argument is any discussion of why this purported error matters. As Mesa West aptly points out, all the above issues were raised, discussed, and addressed in this appeal. We have concluded all of the contentions lack merit. Enough said.

(viii) Should LaMoure and his law firm be held jointly liable for the court ordered disgorgement of attorney fees?

Mesa West sued LaMoure personally and as a professional corporation. LaMoure argues only his professional corporation should be obligated to disgorge fees and costs. He is wrong. The attorney fees contingency agreement was voided, and therefore, it does not matter the agreement was entered into between Mesa West and the professional corporation. Absent a written agreement, LaMoure, as an individual attorney, had an attorney-client relationship with Mesa West and the right to collect reasonable attorney fees for his services. He dealt directly with his clients and reasonably expected they would pay him for the services. In addition, as stated by the trial court, “Notwithstanding the fact that the . . . [agreement] was entered into between [Mesa West] and [Lamoure, a professional corporation], the individual defendant . . . was a party thereto and was bound by all of its provisions[.]” (Citing *Bernstein v. State Bar* (1990) 50 Cal.3d 221, 229-231 [individual attorney “cannot rely on the corporate veil to cloak his own professional lapses”].) Indeed, LaMoure responded to the complaint in his individual capacity and did not allege he was an improperly named party. The court correctly held the fees paid to the attorney and/or his professional corporation were based on a voided contract, and must be disgorged jointly and severally by the attorney and/or his corporation.

(viv) Finally, what about the \$40,000 held in the trust account?

LaMoure filed a cross-complaint to recover \$38,334.79 of the \$40,000 held in the disputed trust account. The court determined LaMoure was entitled to \$25,839 for unpaid invoices pertaining to Amerock. However, it found the claims for the balance of the money (\$14,396.36) was time-barred.

The 1999 contingency fee agreement contained a lien provision, authorizing the attorney to impose a lien “for attorney fees and costs earned or due under this agreement and any and all other matters undertaken by attorney for client. . . .” LaMoure sought to deduct from the settlement proceeds \$39,318 for fees and costs related to: (1) the Amerock litigation (\$25,839); (2) the Caltrans matter (\$13,530); (3) “corporate and general” unpaid invoices (\$2,640); and (4) the Boeing matter (\$1,128). As noted above, the court found in LaMoure’s favor on the Amerock matter (\$25,839). However, the agreement containing the lien provision was declared void by the trial court. Contrary to LaMoure’s contention, it cannot provide a basis upon which to make a claim for the remaining sum held in trust.

LaMoure was required to prove his entitlement to the fees on those unrelated matters. The court found no evidence of an account stated that would have tolled the statute of limitations on those matters. LaMoure does not discuss the dates of when the services were performed, and he failed to refer to invoices or bills on those matters. He stated the costs were subject to an hourly fee agreement, dated 1991 or were subject to an account stated. There is no evidence in our record to support these assertions.

For example, LaMoure stated the 1991 hourly fee agreement is contained in exhibit No. 11. LaMoure relies on exhibit No. 69 as evidence of an account stated. Mesa West submits these exhibits were never received into evidence. But even if they had been, or if there were other relevant admitted exhibits, because neither party requested transmittal of any of those exhibits, they are not before us. (See Cal. Rules of Court,

rule 8.224(a)(1) [requires “a party wanting the reviewing court to consider any original exhibits that were admitted in evidence” to timely serve and file the proper notice in superior court designating those exhibits].) “Where exhibits are missing we will not presume they would undermine the judgment.” (*Western Aggregates, Inc. v. County of Yuba* (2002) 101 Cal.App.4th 278, 291.)

III

The judgment is affirmed. Respondent shall recover its costs on appeal.

O’LEARY, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.